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1.4 **Citations Discussed.** WAC 358-30-170; WAC 251-12-240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997); Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

## II. FINDINGS OF FACT

2.1 Appellant Janise Hodge is an Attendant Counselor 2 and permanent employee for Respondent Department of Social and Health Services, Division of Developmental Disabilities. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on October 19, 1998.

2.2 By letter dated September 15, 1998, Laurie Zapf, Regional Administrator for the Division of Developmental Disabilities, informed Appellant of her one-day suspension for neglect of duty, inefficiency and gross misconduct for writing derogatory and offensive statements at the bottom of a memo issued by the division director and posting the memo on a bulletin board.

2.3 Appellant began her employment with the state of Washington in 1986, and she began working for the SOLA Program in 1989. Appellant has no other history of disciplinary action. In April 1992, Appellant attended diversity training.

2.4 As an Attendant Counselor 2, Appellant works with developmentally disabled individuals enrolled in the SOLA Program. Program participants live in their own homes and Attendant Counselors are considered guests in their homes. Appellant's duties include general housekeeping

1 and cleaning, as well as assisting program participants with daily hygiene care, administering  
2 medication, and escorting them to medical appointments and to recreational activities.

3  
4 2.5 The facts of this case are not in dispute. By memo dated June 1, 1998, Timothy R. Brown,  
5 Director of the Division of Developmental Disabilities, issued a memo entitled "Celebration of Gay  
6 Pride Month" to all staff. The memo, which was written on official agency letterhead, was  
7 subsequently routed to all staff.

8  
9 2.6 On June 25, Appellant read the memo, and she wrote on the upper right hand portion of the  
10 memo, "Yes, you as a TAX payer is (sic) paying for this!!!!" On the bottom half of the memo  
11 Appellant wrote:

12 Where and when do I get a special month? Like

- 13 1) Mothers with only male children pride  
14 2) Women in menopause pride  
15 3) Mothers over 40 with small children and adult children pride  
16 4) People who have a conviction to practice "total absentance"(sic) pride  
17 5) Heterosexual pride  
18 6) Sado/Masacast (sic) Pride  
19 7) Pedophile Pride

20  
21 2.7 Appellant posted the memo on the bulletin board of the SOLA home where it was visible to  
22 other employees, program providers and family members of program participants. Appellant  
23 completed her shift and left for the weekend.

24 2.8 The following comments were subsequently added to the memo by other staff members:

25 Namble Pride (National Men-Boy Love Assoc.)  
26 White girls that date (black men)  
While girls with half breed children pride  
Stand on my head during sexual activitis (sic) pride

Transexual pride  
Adults who dress like babies pride

2.9 A SOLA staff member on a later shift read the memo and became upset and offended with the written comments.

2.10 During a subsequent investigation, Appellant admitted that she had written the first seven comments, however, she denied writing any of the other comments.

2.11 Laurie Zapf, Regional Administrator for the Division of Developmental Disabilities, was Appellant's appointing authority. In assessing what level of discipline to impose, Mr. Zapf considered Appellant's history with the department, the diversity training she had attended and her admission that she wrote the statement. Mr. Zapf testified that one of the agency's missions is to provide a supportive and responsive environment which is tolerant and respectful to the diversity of all employees and clients. Mr. Zapf considered Appellant's comments to be offensive, derogatory, disrespectful and contrary to the agency's mission. Mr. Zapf testified that although Appellant had a right to disagree with the contents of the memo, the manner in which she voiced her opinion was inappropriate and unprofessional and reflected negatively on the agency because it was written on official agency letterhead and posted in a visible location at a SOLA home. Mr. Zapf was also concerned that Appellant's behavior opened the door for other employees to make inappropriate and offensive remarks.

2.12 Mr. Zapf ultimately concluded that it was his responsibility to the agency and its employees to make an impact on Appellant and others that this type of behavior would not be tolerated. Because Appellant had no history of prior discipline and because Appellant had a good work history, Mr. Zapf determined that a one-day suspension was the appropriate sanction.

### III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that the statements written by Appellant were derogatory and offensive and gave way to other employees writing additional inappropriate comments. Respondent argues that one of its missions is to celebrate and recognize diversity in the workplace and that Appellant undermined its ability to do so when she wrote comments which could be considered hostile and discriminatory to others. Respondent asserts that Appellant's behavior was totally unacceptable and she failed to exercise good judgement in the workplace. Respondent further asserts that Appellant's comments opened the door for other employees to join in and make additional derogatory comments. Respondent argues that a one-day suspension speaks clearly and loudly to Appellant and others that this type of behavior in the workplace will not be tolerated.

3.2 Appellant asserts that she became personally offended when she read the memo regarding gay pride week and that she wrote the comments not to espouse her views, but to express her shock at what the state was doing. Appellant argues that her statements had no malicious intent but were meant to be facetious. Appellant contends that she readily admitted her actions and apologized to the individual whom she offended. However, Appellant argues that Respondent has failed to prove she wrote the statement during work time. Appellant argues that she had no previous discipline, that she is a 14 year state employee and that the one-day suspension was too severe.

### IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the

1 sanction was appropriate under the facts and circumstances. WAC 358-30-170; WAC 251-12-  
2 240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

3  
4 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
5 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
6 of Social & Health Services, PAB No. D86-119 (1987).

7  
8 4.4 Inefficiency is the utilization of time and resources in an unproductive manner, the  
9 ineffective use of time and resources, the wasteful use of time, energy, or materials, or the lack of  
10 effective operations as measured by a comparison of production with use of resources, using some  
11 objective criteria. Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal*  
12 *dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997).

13  
14 4.5 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to  
15 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).  
16 distasteful

17  
18 4.6 Respondent has proven that Appellant had a duty to behave professionally and to treat  
19 others with dignity and respect. Respondent has proven that Appellant neglected this duty when  
20 she wrote and posted her comments, which were distasteful and disrespectful, on a bulletin board  
21 for others to read. Although Appellant is entitled to hold her own views and opinions, the forum  
22 which she used to express her beliefs was unacceptable and had the effect of offending a coworker.  
23 Appellant's behavior has no place in today's workplace and should not be tolerated. Respondent  
24 has proven that Appellant was inefficient in her use of work time and her behavior constitutes gross  
25 misconduct. Respondent has met its burden of supporting the charges and proving that a one-day  
26

1 suspension is appropriate under the facts and circumstances. Therefore, the disciplinary sanction  
2 should be affirmed.

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**V. ORDER**

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NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Janise Hodge is denied.

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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

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WASHINGTON STATE PERSONNEL APPEALS BOARD

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Gerald L. Morgen, Vice Chair

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Leana D. Lamb, Member

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